IN THE UNITED STATESDISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JOSE IGNACIO RODRIGO FERNÁNDEZ **Plaintiff,** **V.** **SEABORNE PUERTO RICO, LLC d/b/a SEABORNE AIRLINES; their unknown INSURANCE COMPANY X; unknown CORPORATION or ENTITY; JANE DOE; JOHN DOE; as well as any Other Joint Tortfeasors.** **Defendants.**	**CIVIL NO.:** **RE:** BREACH OF CONTRACT; DIVERSITY JURISDICTION *TRIAL BY JURY DEMANDED*

COMPLAINT

COMES NOW Plaintiff, **JOSE IGNACIO RODRIGO FERNÁNDEZ** ("Mr. Rodrigo" or "Plaintiff"), through the undersigned attorney, and very respectfully, states, alleges and requests as follows:

INTRODUCTION

1. This is a civil action brought by Plaintiff, Jose Ignacio Rodrigo Fernández, against Seaborne Puerto Rico, LLC, d/b/a Seaborne Airlines ("Seaborne"), Seaborne's insurer, and against any other individual or entity whose identity is still unknown at this time, but who are liable in whole or in part for the unilateral, unexpected and unexplained breach of an international transport contract to transport Plaintiff by airplane from San Juan, Puerto Rico to Santo Domingo, Dominican Republic on June 18th, 2016, as guaranteed by Puerto Rico Law and the Treaties signed by the United States of America.

2. On June 18^{th} 2016, Plaintiff was traveling from San Juan to Madrid, and for this purpose, he purchased an airline ticket issued by Seaborne for travel between San Juan and Santo Domingo in flight BB4519 leaving San Juan at 18.50, boarding at 18.30 and on flight UX 0088 operated by Air Europa and departing Santo Domingo at 21.25 and boarding at 20.30.

3. As a threshold matter, and in order to shed light on the nature and extent of Seaborne's contractual breach, it is essential to highlight that Seaborne (i) waited until the very last minute, before the flight scheduled departure time, to inform Plaintiff that Seaborne was not going to honor its contractual commitment to transport plaintiff to Santo Domingo, and therefore, Plaintiff was going to lose his flight to Madrid on June 18^{th}; and (ii) Defendants failed to provide a contractually justifiable explanation for the flight cancellation, including but not limited to mechanical failures in the aircraft or inadequate weather conditions.

4. Plaintiff is a Spanish national of fifty-eight (58) years who travels regularly between San Juan and Madrid, and was obliged to be present in Madrid on June 19th, both for professional and family reasons.

5. - Plaintiff will prove that Seaborne and defendants acted consciously and wantonly contrary to the Treaties and laws, which protect any passenger against any unexpected and unexplained breach of the transport contract **without the existence of inadequate weather conditions or mechanical difficulties.**

7. - Plaintiff will also prove that he has filed an administrative complaint against Seaborne before the Federal authorities.

8.- Plaintiff will also demonstrate that requested monetary compensation for the breach of the contract, with adequate response, so he was left with no other option than to resolve the instant dispute in this Honorable District Court.

JURISDICTIONAL BASIS AND VENUE

8. Jurisdiction in this case arises by federal question jurisdiction under 28 U.S.C. §1331, as Plaintiffs seeks relief under the Montreal Treaty signed and duly applicable as Treaty of the United States. Attached as **Exhibit I**.

9. - The Convention signed in Montreal in 1999 is a US Treaty since 07/31/2003 as approved by 108th Congress (2003-2004). Article 19th orders that *The* ***carrier is liable for damages occasioned by delay in the carriage by air of passengers***. Article 33 orders jurisdiction of the Court of the territory of the carrier's domicile or carrier's principal place of business.

10. Plaintiff also invokes, pursuant to 28 U.S.C. §1367, this Honorable Court's Supplemental Jurisdiction over claims arising under Puerto Rico Civil Code, 31 LPRA. Article 1041, et seq., for breach of contract related to the airplane transport contract.

11. Jurisdiction in this case also arises under 28 U.S.C. §1332 as

(a) The district courts shall have original jurisdiction of all civil actions where the ***matter in controversy exceeds the sum or value of $75,000****, exclusive of interest and costs, and is between*
(2) Citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted ***for permanent residence in the United States and are domiciled in the same State;***

12. Venue is proper in the District of Puerto Rico pursuant to 28 U.S.C. §1391 (b) (2) since the events or omissions giving rise to this claim occurred in this district.

THE PARTIES

13. Plaintiff **JOSE IGNACIO RODRIGO FERNÁNDEZ** (hereinafter referred to as **"PLAINTIFF")** is a Spanish national, of legal age, who is not a permanent **resident** of the United States and **is not permanently domiciled in Puerto Rico**.

14. Plaintiff owns an apartment in Carolina, Puerto Rico. His physical address is 4237 Ave. Isla Verde, Carolina, and Puerto Rico, 00979. Plaintiff's principal place of business and principal residence is located in Madrid, Spain. His professional legal office is located in Madrid, Spain, c / Grijalba 25, 28006 Madrid.

15. Plaintiff has a B 2 business visa issued by the Federal Department of State for a term of ten (10) years starting in October 18, 2012 and expiring October 18t, 2022. Therefore, Mr. Rodrigo is not a permanent resident of Puerto Rico.

16. Defendant **SEABORNE PUERTO RICO, LLC d/b/a SEABORNE AIRLINES** (hereinafter, Seaborne or defendant) is a corporation or entity organized and existing under the laws of the Commonwealth of Puerto Rico with the capacity to sue and be sued who owns and operates an airline business, which according to their documents of incorporation is located at the Luis Muñoz Marin International Airport, Terminal D Gate 18, Carolina, Puerto Rico, 00979. Seaborne's corporate offices are located on the **ninth floor of the Word Plaza building in 268 Muñoz Rivera Avenue, San Juan, Puerto Rico 00918.**

17. Defendant **unknown INSURANCE COMPANIES X**, (hereinafter referred to as "Insurance companies") are unknown insurance companies organized and operating under the laws of Puerto Rico and/or a state in the United States of America, with their principal place of business in Puerto Rico which, by information or belief, each of them provided general liability insurance coverage to the foregoing Defendant **SEABORNE**, as well to other responsible entities and persons for incidents such as the one brought in the instant case.

18. Defendants **unknown CORPORATION or ENTITY** are unknown corporations or entities which are citizens of Puerto Rico or any state or U.S. territory, duly authorized to do business in Puerto Rico who are fictitiously named herein to be later replaced by their actual names which may become known through further discovery in this litigation, and who may be therefore liable to Plaintiff, in whole or in part, jointly or severally, for the actions and/or omissions herein described and the damages suffered by Plaintiff

19. Defendants **JANE DOE** and **JOHN DOE** are unknown persons or entities which are citizens of Puerto Rico or any state or U.S. territory, who are fictitiously named herein to be later replaced by their actual names which may become known through further discovery in this litigation, and who may be therefore liable to Plaintiff, in whole or in part, jointly or severally, for the actions and/or omissions herein described and the damages suffered by Plaintiff.

FACTUAL ALLEGATIONS

20. Plaintiff paid a ticket with Air Europa and Seaborne from San Juan, Puerto Rico to Madrid, for June 18, 2016, leaving at SJU 18.50 destination Santo Domingo and arriving at 20.05 to take flight UX 88 departure at 21.25 and Arriving on June 19 to Madrid at 11.30.

21. The flight from San Juan to Santo Domingo is operated by Seaborne with the

number BB4519.

22. Plaintiff checked in with Seaborne and obtained his boarding pass at the airport of San Juan on 6/18/2016 at 14:10 for flight UX3088 (operated by Seaborne BB4519) to Santo Domingo to embark destination Madrid at 20.25. Attached as **Exhibit II.**

23. At 18.10 p.m., **without prior notice or explanation**, Seaborne cancelled flight BB4519.

24. Seaborne **did not give any explanation**, just that the flight was cancelled. The Defendants did not raise the current weather conditions or mechanical failures of the aircraft as the reasons for the cancellation.

25. Plaintiff sent several e-mails to Seaborne employee Wesly Pagán at wesly.pagan@seaborne.com, which acknowledged the breach of contract and apologized for the harm caused by Seaborne. Several e-mails where sent and received on June 18th to 19th. Attached as **Exhibit III**.

26. After two hours waiting at the airport, Seaborne told Plaintiff that they were going to accommodate him at the Airport Hotel, which was not possible, since it was already full. Then they told Plaintiff that they will send him to the Marriot Courtyard located in Miramar, but there was only one room and two passengers were left unaccommodated, so Plaintiff gave the room to the other passenger and left for his apartment. Defendants did not pay Plaintiff for his transportation services.

27. Plaintiff had to rent a car for a day for $ 92.68, plus pay the 5 international calls to Air Europa, plus the dinner on 18/6 and the breakfast and lunch on 19/6. Attached as **Exhibit IV**.

28. The next morning Plaintiff called Air Europa, and at 9.25 a.m., was accommodated on the flight from San Juan to Madrid on June 19 at 21.25. Defendants did nothing to solve the problem. He arrived in Madrid at 11.30 on the 20th of June, with a delay of 24 hours.

29. At 12.25 a.m., on June 19, Plaintiff received an email from Seaborne informing him that "it was already arranged", when the truth of the matter is that the situation was solved directly by Plaintiff, with no help from the Defendants.

30. The behavior of Seaborne has been of contempt to the passenger, and reckless disregard for the passenger's personal situation. Mr. Rodrigo was not event provided with a simple explanation regarding the alleged reasons that gave rise to the cancellation of the flight, without prior notice. There were no meteorological or mechanical reasons and Seaborne did not justify the cancellation with any valid or legitimate reason.

31. Plaintiff sent an extrajudicial complaint by e mail to Air Europa on June 20th, 2016.

32. Air Europa acknowledged receipt on June 21st, 2016 and replied on August 8th 2016, imputing all liability to Seaborne. Said document is attached as **Exhibit V**.

After making the appropriate inquiries, we were acknowledged that on June 18, you *send a written to the Department of Reclamation of the United States, so* ***I have reported on the basis of its claim, the operating company Seaborne that is the operator of the canceled flight, which will manage your claim as they communicated to us.***

33. - Plaintiff address a complaint at the U.S. Department of Transportation the same June18th, 2016, processed as DD2016060109 stating

I obtained my boarding pass at 14.10 p.m. Boarding time was 18.30. Without prior notice, at 18.10 the flight was cancelled. I lost my connection to Madrid, which was in Santo Domingo at 20.25 with UX 0088. No prior notice or explanation was given to me.

It was answered on June 21. Attached as **Exhibit VI**.

34. - On August 11, 2016, Seaborne send an e mail to Plaintiff referring to the complaint as a mere refund of funds, which was not what Plaintiff has addressed. David Potosnak, Customer Relations Manager, subscribed said communication. Attached as **Exhibit VII** stating

Good Day Mr. Rodrigo, have reviewed your request for refunding the unused portion of your tickets. A refund needs to be done through the booking agent used when you purchased the tickets whether it be a travel agent or another airline I am not sure.

To further explain, when a reservation is not made and paid direct to the airline and a third party or travel agency/booking agent is used airline monies are held in a central clearinghouse. When the passenger travels on the specific tickets, the monies are released the respective airlines. When a flight is cancelled and a passenger requests a refund, the booking agency or travel agent must request the refund of the airline. The airline gives their approval or denial. If approved, then the airline would provide a code to the Travel Agent. This code, called a waiver code, enables the travel agent to refund the passenger the designated monies to the original form of payment, and then re-charge or charge back to the airline for the refund. This is for tracking and accounting purposes.

Please contact the booking agent you used when you purchased your tickets and request your refund. I will process the 100.00 refund to day and it should take 10-12 business days to cycle back to your card.

35. - Plaintiff has suffered great personal and professional prejudice, because on June 19, 2016, he had his father of 92 years suffering from illness, and the possible birth of his granddaughter. Also, Plaintiff failed to comply with professional commitments scheduled for June 20, 2016, due to Seaborne's negligence and breach of contract.

36. - Therefore an indemnity is demanded of all the costs and damages suffered, and the reimbursement of all the expenses paid.

FIRST CAUSE OF ACTION:
INDEMNITY AS RULED IN ARTICLE 19 TH OF THE U.S. TREATY CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR SIGNED IN MONTREAL ON MAY 28TH 1999.

37. The factual allegations contained above are restated herein in full.

38. The events expressed herein constitute a clear breach of the transport contract between Plaintiff and Defendants.

39. Defendants personnel actions are deemed as those of the defendant, making said party vicariously and its insurer liable under article 19th of the Montreal Treaty and the other statutory laws applicable.

40. - Article 1 of the above mentioned U.S Treaty, orders the scope of the Convention stating

"This Convention applies ***to all international carriage of persons****, baggage or cargo* ***performed by aircraft for reward".***

41. - The Montreal Convention **is in force in U.S. to protect international passengers,** as it clearly states that

RECOGNIZING the importance of ensuring protection of ***the interests of consumers in international carriage by air*** *and the need for equitable compensation based on the* ***principle of restitution;***

42. - Article 19 of the Montreal Treaty, order's that

The ***carrier is liable for damage occasioned by delay in the carriage by air of passengers,*** *baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.*

None of the exceptions are applicable or have been invoked by Defendants.

43.- Article 22.1 states an compensation of 4.150 SDR (Special Drawing rights), therefore, $ 5.600 as of 1999. Article 24 establishes the adjustment for inflation requiring an adjustment for inflation every five years. Therefore, as 17 years has passed since the amount of $ 5.600 was ordered, we respectfully submit that, as of the date of the filing of the Complaint, the applicable adjusted compensation consists $ 10,640.00.

44. In disregarding Plaintiff's rights under the Montreal Convention, defendant acted with such gross disregard of Plaintiff's rights and showed such a wanton lack of sensibility that would shock the conscience of reasonable minded individuals. It is not the only time Defendants has done so.

45. The Defendants, through their illegal acts and breach of their commitments to Plaintiff, caused damage to Plaintiff in violation of the U.S Treaties and Laws of both the commonwealth of Puerto Rico and United States of America.

46. Pursuant to the foregoing articles, defendants respond jointly and severally for the damages related herein due to their negligent and culpable actions and omissions, and/or negligent actions and omissions of their employees, agents, representatives or contractors.

47. Defendants knew that Plaintiff needs to board flight BB4519 to fly to Santo Domingo to be able to board flight UX 0088 to fly to Madrid on June 18th, 2016 and they showed complete disregard for his personal situation.

48. As a direct result of the Defendants' breach of contract, Plaintiff lost one day of work and suffered mental and emotional pain and distress.

49. As a direct result of the Defendants' negligent and reckless acts, Plaintiff has suffered economic damages.

50. Plaintiff requests direct economic damages for violation of these provisions in excess of $20.000,00.

51. Defendant has acted maliciously and with reckless disregard of Plaintiff's state and federally protected rights by breaching his contract against Plaintiff wantonly and consciously, thereby entitling Plaintiff to punitive damages.

52. In *Smith v. Wade* 461 U.S. 30 (1983), the US Supreme Court stated that

"Punitive damages are awarded in the jury's discretion 'to punish [the defendant] for his outrageous conduct and to deter him and others like him from similar conduct in the future.

53. This kind of consciously and wantonly breach of contract provides for double compensation for violation of its provisions which are estimated in no less than $ 60,000.00.

SECOND CAUSE OF ACTION:
BREACH OF CONTRACT PURSUANT TO THE
APPLICABLE PROVISIONS UNDER article 1041 *et seq*., of PR CIVIL CODE

54. - The factual allegations contained above are restated herein in full.

55. - Article 1054 of Puerto Rico Civil Code, orders

"They are subject to compensation for damages and losses, which in the performance of their obligations incurred in intent, negligence or delinquency, and those who in any way contravene the tenor of those"

56. - Plaintiff requests economic damages consisting of $10,640.00 for violation of these provisions and also requests compensation for emotional damages in excess of $20,000.00.

THIRD CAUSE OF ACTION:
DIRECT ACTION AGAINST INSURER

57. - The factual allegations contained above are restated herein in full.

58. - The insurance companies of any named or unnamed defendants, the unknown insurance company X, are directly liable for the fault or negligence, and/or intentional act of the insured pursuant to 26 L.P.R.A. § 2001.

59. - Pursuant to 26 L.P.R.A. § 2003, an action against an insurer may be brought separately or may be joined with an action against the insured.

DAMAGES AND RELIEF

60. - The factual allegations contained above are restated herein in full.

61.- At all times herein mentioned, Plaintiff should be compensated in damages under the Montreal Convention, no less than $10,640.00, which should be doubled upon application of such statute.

62. - The emotional damages referred to in the previous paragraphs are estimated in an amount of no less than $20,000.00.

63. - At all times herein mentioned, due to defendant's breach of contract practices with malice and/or reckless indifference to Plaintiff's federally protected rights, punitive damages should be awarded in the maximum amount permitted by law, in no less than $ 60.000,00.

64. - As a result of the matters pled in the previous paragraph, defendant should be sanctioned with punitive damages in the maximum amount permitted by law so that said party is adequately punished and an example be made for all those who may be considering to incur in the same conduct.

65. - Plaintiff is also entitled to reasonable attorney's fees as prescribed under the applicable statutes.

65. - Order the Defendant to make the Plaintiff whole by ordering payment of the damages abovementioned as follows:

Damages for economic loss in excess $10,640.00 or the maximum amount permitted by federal law or the Montreal Convention.

Damages for breach of contract in excess of $10,640.00.

Emotional and distress damages for no less than $ 20,000.00.

Punitive damages for no less than $ 60,000.00

Award the Plaintiff the cost of his action, together with reasonable attorney's fees as stated before.

TRIAL BY JURY DEMANDED

67. - Plaintiff hereby demands a trial by jury.

WHEREFORE, Plaintiff requests that this Honorable Court (i) take notice of the foregoing; (ii) enter judgment against Defendants jointly and severally, in the amount of no less than **eighty two thousand dollars ($82,000.00)** as well as reasonable attorney's fees, and (iii) grant such further relief as to this Honorable Court may deem just and proper under the law.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 21st day of February 2017.

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